U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 0 3 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a pre-kindergarten teacher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT 90), P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on June 18, 2012. In an accompanying introductory statement, counsel stated:

> [The petitioner's] first position in the U.S. was at , Maryland within the a school system with one of the highest concentrations of low achieving students and students living in poverty.

> Undaunted, [the petitioner's] passion for teaching and her belief in her students' abilities to succeed, led her to quickly rise as a leader in her community much in need of her highly-developed skills. She served four years as team lead, helping newer teachers within the develop strategies to guide their students toward success. She was also hand-selected to participate in a Pilot Teacher Evaluation Model, which is designed to help teachers toward the demonstration of extinguished [*sic*] behaviors. Her dedication to her students, along with her innovative and goal-oriented teaching strategies, resulted in 100% of her students achieving level mastery. Consequently, her students were able to transition successfully to the next level.
>
> Currently, she serves as the Lead Pre-Kindergarten teacher at Maryland. Under her guidance, her students score on average in the mid 70s, thus putting the school in the top ten percent (10%) of school[s] nationwide. Thus, [the petitioner's] success as an educator has been decorated with consistent, exemplary performance and goal achievement in line with those benchmarks set forth by Congress for the betterment of U.S. education.

At one point in the introductory statement, counsel indicated that was part of the system, but the Academy is a private school, not affiliated with

With respect to counsel's discussion of the petitioner's abilities in the context of her own classroom, a degree of expertise significantly above that ordinarily encountered in a given field is the regulatory definition of "exceptional ability." 8 C.F.R. § 204.5(k)(2). Exceptional ability, in turn, is not grounds for the national interest waiver. By statute, the job offer requirement applies to aliens whose exceptional ability will substantially benefit the United States. Section 203(b)(2)(A) of the Act. Therefore, it cannot suffice for the petitioner to show that she is better than most teachers.

Counsel's exhibit list included a section headed "[The petitioner's] Awards and Outstanding Contributions to the field of education," listing the following items:

- The petitioner's master's thesis, "Native Language Use and Academic Achievement Among Minority Language Students";
- An "Outstanding Teacher Award" from
- "Certificates of Appreciation" from
- A "Plaque of Appreciation" from the Philippines, "for TEN YEARS of loyal, faithful and dedicated service";
- Certificates from identifying her class as a "Model Class Reader," "Model Class Reader" and "Most Behaved Section," and acknowledging her service as "Assistant Mutual Fund Officer";
- A "Certificate of Recognition" for speaking at a graduation program at

- A "Certificate of Excellence" for speaking at a conference of the Association of Filipino Teachers of America;
- copies of the petitioner's students' assessments; and
- "Articles from the Early Reading First Summer School Newsletter in which [the petitioner] was a leader on the program team."

Counsel did not explain how the evidence listed above demonstrated the petitioner's "Outstanding Contributions to the field of education" as claimed.

The petitioner submitted letters from administrators and faculty at schools where the petitioner has taught, as well as from parents of students at and others in her community. These witnesses praised the petitioner's professional skills and her dedication to her work and to her students, but did not establish that the petitioner's work has had an impact outside of the schools or districts where she has taught.

principal of discussed the petitioner's participation in the Pilot Teacher Evaluation Model. Counsel stated that "100% of [the petitioner's] students achiev[ed] level mastery," but Ms. stated only that the petitioner "was extremely close to expectancy" in that project.

On November 15, 2012, the director issued a request for evidence, instructing the petitioner to submit evidence to meet the *NYSDOT* national interest guidelines. The director quoted from selected witness letters, but found that "[t]he petitioner did not submit evidence of past contributions that would warrant the expectation of a national prospective benefit to a degree that would overcome the national benefit of the labor certification process."

In response, counsel quoted remarks made by then-President George H.W. Bush when he signed the IMMACT 90, which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." While IMMACT 90 amended the Act to create the national interest waiver, that same legislation also defined teachers as professionals, and held professionals to the job offer requirement at section 203(b)(2)(A) of the Act. IMMACT 90 neither created nor implied a blanket waiver for teachers.

Counsel then asserted that USCIS "should be as flexible as possible" when considering waiver applications. The statute and regulations define certain limits, beyond which flexibility is not possible. Teachers, as members of the professions, are expressly subject to the job offer requirement which remains part of the statute.

Counsel stated that *NYSDOT* lacks clarity with regard to educators and education, and that the No Child Left Behind Act (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), provided "a definite working tool in defining[] what is 'in the national interest' including the clear standard on what qualifications must be required from NIW teacher self-petitioners. . . . There is no longer vagueness or obscurity." Counsel contended that, by passing the NCLBA, "the United States Congress . . . has

effectively preempted the Immigration Service to exercise ministerial duty in honoring the self-executory tenets embellished in No Child Left Behind Act of 2001."

Counsel cited no specific passage from the NCLBA to support the above assertions. The phrase "national interest" does not appear in the text of the NCLBA, and that statute did not create any new immigration provisions or modify any existing ones.

Counsel asserted: "it is reasonable for the Immigration Service to waive the job offer requirement . . . given the prevailing poor performance of the American school children compared to other countries, which is caused by lack of 'Highly Qualified Teachers' for these students." Counsel cites no evidence to support the claimed link between "poor performance" and the "lack of 'Highly Qualified Teachers.'" The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel quotes a U.S. Department of Education source that appears to contradict the above claim. The *ESEA Blueprint for Reform* indicated that holding a teacher to the "Highly Qualified" standards "does not predict or ensure that a teacher will be successful at increasing student learning."

The NCLBA created no blanket waiver for "Highly Qualified Teachers." The petitioner has not established that the admission of one "Highly Qualified Teacher" would have a significant effect at the national level. The NCLBA has been in effect for over a decade, and the petitioner has taught in the United States for several years. Counsel did not show that the petitioner's past work in the United States has had results that point toward further future benefit to the United States.

Counsel claimed that the labor certification process presents a "dilemma" because "The United States Department of Labor minimum education requirement Report for High School Teacher is just a bachelor's degree," but "the employer is required by No Child Left Behind . . . to employ highly qualified teachers." Counsel claimed: "Going through the tedious process of labor certificat[ion] will delay if not completely frustrate the employment of 'Highly Qualified Teachers' presently working in the United States if labor certificat[ion] is denied."

Section 9101(23) of the NCLBA defines the term "highly qualified teacher." Briefly, by the statutory definition, a "highly qualified" school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- demonstrates competence in the academic subjects he or she teaches.

Counsel did not explain how the above requirements are incompatible with the existing labor certification process. The minimum degree requirement, which counsel has emphasized, is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor's degree).

Counsel discussed the importance of education in science, technology, engineering, and mathematics (STEM), and federal initiatives to boost STEM education. These are general assertions relating to the intrinsic merit of education, rather than specific points showing the petitioner's individual eligibility for the waiver. Furthermore, the petitioner has stated that she seeks employment as a pre-kindergarten teacher, rather than as a teacher specializing in STEM education. Therefore, the relevance of these assertions is not evident.

While most of counsel's assertions concerned the claim that the NCLBA and other federal initiatives have indirectly created a blanket waiver for "highly qualified teachers," counsel also asserted that the petitioner's academic qualifications and experience exceed the minimum requirements, and therefore the labor certification process cannot accommodate these superior qualifications. The statute and regulations do not limit the job offer requirement to minimally-qualified foreign workers, nor do they state that a worker who possesses more than the minimum qualifications is therefore eligible for the waiver. Even if one's abilities rise to the level of exceptional, the job offer requirement remains.

As an "equitable consideration," counsel stated that the petitioner

> is firmly commited to continue teaching at . However, is currently barred for a two-year period (i.e. from March 16, 2012 to March 15, 2014) from filing any employment-based immigrant and/or nonimmigrant petition . . . arising from willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I. . . . Thus, through no fault of her own, [the petitioner] would not be able to continue teaching in unless her E21 visa petition is approved, not to mention the fact that she has already firmly established a life here in the United States.

The petitioner already left in 2011, before the debarment order took effect. Since that time, she has worked for a private school that is not covered by the Department of Labor's debarment order. The temporary debarment order is not grounds for granting a permanent immigration benefit. The assertion that the petitioner "has already firmly established a life here in the United States" does not establish her eligibility for the national interest waiver.

In a separate statement, the petitioner described and documented her activities at the local level, and stated that she would have remained at if the debarment had not occurred. Regarding her work at the petitioner stated:

> I was even chosen by the principal to be the Pre-K level chair and joined the School Design Team. I shared my expertise [with] my colleagues in handling small kids during center time and differentiated instruction. Ms. , one of the Teach for America teachers attested the fact that I coached and provided guidance for her during her first year as a preschool teacher. I was also chosen by Early Childhood Instructor to have demonstration lessons to novice teachers in our area.

> When [redacted] piloted a new teacher evaluation program in 2010-2011 I was selected to participated in the Pilot Teacher Evaluation Model (PTEM) which assists teachers toward the demonstration of extinguished [*sic*] behaviors and was being commended for an excellent job. The [redacted] is now using the Framework for Teachers (FFT) model [for] all its teachers.

The petitioner's skill as a teacher is not in dispute in this proceeding. The petitioner is a member of the professions holding an advanced degree, and by statute, she is subject to the job offer requirement. Even if the petitioner demonstrated exceptional ability in her field, that requirement would remain. Participation in district initiatives and helping to train new teachers at her school are local activities that do not rise to the level of the national interest required by the law.

The director denied the petition on April 3, 2013. The director acknowledged the intrinsic merit of the petitioner's occupation, but found that the petitioner had not established that the benefit from her proposed employment would be national in scope. The director also found that the petitioner had not established a past history of achievement with some degree of influence on the field as a whole.

On appeal, counsel asserts that the *NYSDOT* decision acknowledged "the absence of [a] clear-cut Congressional standard in understanding the concept of 'in the national interest,' and the mandate for 'flexibility.'" Counsel contends Congress resolved this "obscurity" and "preempted the USCIS" by passing the NCLBA "three years after NYSDOT was designated as a precedent decision." Counsel claims that "the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public school sector." Counsel claims that the "United States Congress legislated NCLB to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers,'" but identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. The text of the NCLBA does not mention the Department of Homeland Security, USCIS, foreign teachers, the job offer requirement, labor certification, the national interest waiver, or the phrase "national interest." Its only references to immigrants concern "immigrant students" and "immigrant children and youth." Counsel suggests that Congress intended for the NCLBA to affect the adjudication of national interest waiver applications, but cites no source. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Contrary to counsel's assertion that the NCLBA modified or superseded *NYSDOT*, that legislation did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in

direct response to *NYSDOT*, counsel has not established that the NCLBA indirectly implies a similar legislative change.

Counsel notes that section 203(b)(2)(A) of the Act includes the phrase "national . . . educational interests . . . of the United States." The assertion that the United States has "educational interests" does not create a blanket waiver for teachers. The same cited section of the law also subjects teachers (as members of the professions) to the job offer requirement. Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Here, the petitioner has not established that Congress intended to exempt teachers from the job offer requirement, either through section 203(b)(2)(A) of the Act, the NCLBA, or any other federal legislation. Congress's only direct statement on the matter has been to apply, not waive, the requirement. Counsel has not supported the claim that the NCLBA amounts to Congress's definitive statement on waiving the job offer requirement for "highly qualified teachers."

Counsel contends that *NYSDOT* "requires overly burdensome evidence on the qualification of the self-petitioner, identical to EB-1 extraordinary requirements when the law makes it available to those either 'with an advanced degree' or 'exceptional ability.'" The evidentiary requirements to establish extraordinary ability appear at 8 C.F.R. § 204.5(h)(3). Those requirements are not "identical" to the guidelines in *NYSDOT*, and counsel has identified no strong similarities. Concerning counsel's assertion that the waiver is "available to those either 'with an advanced degree' or 'exceptional ability,'" those qualifications make one eligible to apply for the waiver, but do not guarantee the approval of that application.

Counsel states:

> Assuming *NYSDOT* is apposite, the perennial question is what is the standard to be met in order that an NIW petitioner's proposed employment will have national-level benefit. . . .
>
> Our position is that NCLB and the Obama Education Programs have determined the National Educational Interests including the qualification of professionals to achieve it.
>
> The standard in other words is not national geography but national intellection directed to recapture the nation's economic dominance. This is what is called 'Bridging the Gap.' Syllogistically, hiring 'Highly Qualified Teachers' would produce more graduates than dropouts.

The opening clause of the quoted passage incorrectly implies that *NYSDOT*'s applicability is debatable. As a designated precedent decision, *NYSDOT* is binding on all USCIS employees. *See*

8 C.F.R. § 103.3(c). Counsel notes that the beneficiary in *NYSDOT* was an engineer rather than a teacher, but the salient points of the precedent decision are not specific to engineers.

The remainder of the quoted passage concerns, first, the unsupported claim (already discussed) that federal education initiatives have direct implications for immigration policy that are or ought to be binding on USCIS, and, second, the claim that "Highly Qualified Teachers" serve the national interest by increasing graduation rates. Regarding the second claim, the existence of federal education policy does not give national impact to the efforts of one schoolteacher, and the petitioner has not established that the hiring of one "Highly Qualified Teacher" increases graduation rates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Counsel cites various Department of Education publications concerning the goals of the NCLBA and other federal programs, but no evidence documenting the results of those programs a decade after the NCLBA's enactment. Instead, counsel cites recent statistics regarding poor student performance by PGCPS students, several years after the passage of the NCLBA and several years after the petitioner began working for PGCPS.

Eligibility for the waiver rests on the merits of the individual seeking the waiver, and the record does not show that the petitioner has had or will have a nationally significant impact on graduation rates. Her status as a "Highly Qualified Teacher" under the NCLBA neither establishes nor implies eligibility for the national interest waiver.

Turning to the petitioner's individual merits, counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM" and points to her "proven success in raising proficiency of her students." Counsel cites no evidence to support these claims, which come a page after counsel cited statistics showing that [redacted] remains an underperforming district in Maryland.

Counsel states that the recruitment of "Highly Qualified Teachers" is crucial because the Teach for America (TFA) program has produced disappointing results, "since TFA teachers comprise recent college graduates who possesses [*sic*] mere minimum qualifications." Counsel, however, also cites "[t]he U.S. Department of Education's finding that meeting the NCLB Act's requirements for the 'highly qualified' standard 'does not predict or ensure that a teacher will be successful at increasing student learning.'" This assertion appears to undermine counsel's central claim that the NCLBA, rather than any immigration statute, regulation, or case law, should be the controlling factor in this proceeding.

Counsel claims that the labor certification process presents a "dilemma" because

> there is more likelihood than not as dictated by experience that replacing 'Highly Qualified Teachers' with those having only minimum qualification that these federally funded schools would fail to meet the high standard required under the No

> Child Left Behind (NCLB) Law resulting not only [in] closure of these schools but loss of work for those working in those schools.

Counsel identifies no "federally funded school" that has closed as a result of failing to meet NCLBA standards. Attributing this claim to "experience" cannot suffice in this regard. Also, counsel has not shown that awarding the waiver to the petitioner would prevent school closures on a nationally significant scale. This assertion is, instead, effectively another claim in support of a blanket waiver for "Highly Qualified Teachers," as the national effect would be collective rather than individual.

Counsel's assertions rely on the assumption that there is a significant difference between a minimally qualified teacher (for purposes of labor certification) and a "Highly Qualified Teacher" as defined by the NCLBA. Section 9101(23) of the NCLBA defines the term "Highly Qualified Teacher." Briefly, by the statutory definition, a "highly qualified" school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- demonstrates competence in the academic subjects he or she teaches.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not "Highly Qualified" if he or she has "had certification or licensure requirements waived on an emergency, temporary, or provisional basis." Counsel does not explain how the above requirements are incompatible with the existing labor certification process. The minimum degree requirement (*i.e.*, a bachelor's degree) is the same for labor certification as it is for a highly qualified teacher.

Counsel asserts that the petitioner "has submitted overwhelming evidence" of eligibility, and lists several previously submitted exhibits under the heading "Awards and Recognition." Some of the listed exhibits (such as the petitioner's graduate thesis) are neither awards nor recognitions. The petitioner has not established that these materials are "overwhelming evidence" in her favor. Local recognition can help support a claim of exceptional ability, under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), but exceptional ability does not establish or imply eligibility for the waiver.

Counsel contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers, and asserts: "the USCIS-Texas Service Center should have presented its own comparable worker, if there be any at all," as a basis for comparison against the petitioner. Counsel's contention rests on the incorrect assumption that the *NYSDOT* guidelines amount to little more than an item-by-item comparison of an alien's credentials with those of qualified United States workers. The key provision in *NYSDOT* is that the petitioner must establish a record of influence on the field as a whole. *Id.* at 219, n.6. To do so does not require an invasive review or comparison of other teachers' credentials.

Counsel suggests that teachers who meet the NCLBA's definition of "Highly Qualified Teachers" should receive what amounts to a blanket waiver of the job offer requirement. The applicable statute and regulations, however, provide no basis for such a blanket waiver.

By statute, engaging in a profession (such as teaching) does not presumptively entitle such professionals to the national interest waiver. Congress has not established any blanket waiver for teachers. Eligibility for the waiver rests not on the basis of the overall importance of a given profession, but rather on the merits of the individual alien.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.